

## Remarks

### 1. Summary of the Office Action

In the office action mailed June 30, 2008, (i) the Examiner rejected claims 9-18, 21, and 22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, (ii) the Examiner rejected claims 1, 3, and 4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0218974 (Zuniga), U.S. Patent No. 6,137,773 (Stilwell), and U.S. Patent Application Publication No. 2004/0219920 (Love), (iii) the Examiner rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Zuniga, Stilwell, Love, and U.S. Patent No. 6,236,866 (Meyer), (iv) the Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Zuniga, Stilwell, Love, and U.S. Patent No. 5,838,671 (Ishikawa), (v) the Examiner rejected claim 7 under 35 U.S.C. §103(a) as being unpatentable over Zuniga, Stilwell, Love, and U.S. Patent No. 7,158,812 (Lee), (vi) the Examiner rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Zuniga, Stilwell, Love, and a publication entitled “Interpreting CDMA Measurements” (daSilva), and (vii) the Examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Zuniga, Stilwell, Love, and U.S. Patent Application Publication No. 2001/0019543 (Mueckenheim).

### 2. Amendments and Pending Claims

Applicant has amended claims 1, 17, 18, 20, and 21, cancelled claims 6, 9, 11, 13-16, and 22, and added new claims 23-29. Claims 1-4, 7, 17-21, and 23-29 are presently pending in this application. Of the pending claims, claim 1 is independent.

Support for the amendment to claim 1 is located in the specification, for example, at page 13, line 15 to page 14, line 11, and page 22, lines 7-8. Support for the amendment to claim 20 is

located in the specification, for example, at page 16, lines 5-7. Support for the amendment to claim 21 is located in the specification, for example, at page 13, line 19 to page 14, line 11.

### 3. Response to the Claim Rejections

#### a. Claims 1-4, 6, and 7

The Examiner rejected independent claim 1 under 35 U.S.C. § 103(a) as being unpatentable over Zuniga, Stilwell, and Love. Applicant submits that independent claim 1, as amended, patentably distinguishes over Zuniga, Stilwell, and Love.

At a minimum, Zuniga, Stilwell, and Love do not reasonably lead to determining a maximum number of users such that a probability of exceeding a predetermined RNR is below a threshold, wherein the probability is determined from a ratio of a number of the measurements having an RNR below the predetermined RNR to a number of measurements corresponding to those at or below a specific number of active users, as recited in claim 1.

Applicant submits that the other prior art of record does not make up for the deficiency of Zuniga, Stilwell, and Love. In the office action mailed March 14, 2008, in rejecting claim 9, the Examiner stated, “Ishikawa teaches a calculation and relationship between the number of users connectable to the base station and the interference threshold to determine a probability of blocking new users and a probability of an outage (see abstract).” (Office action mailed March 14, 2008, page 9).

Column 13, lines 1-5 of Ishikawa discloses the blocking probability  $P_{block}$  can be given by the following expression.

$$P_{block} = \sum_{r=0}^{\infty} (1 - p(r))P_r$$

Column 13, lines 16-23 of Ishikawa discloses the outage probability of communications quality can be obtained as follows. A probability  $P_k$  for  $k$  users to be in the speech state within a base station is given by the following expression.

$$P_k = \sum_{r=k}^N \binom{r}{k} \rho^k (1 - \rho)^{r-k} P_r$$

Although Ishikawa discloses a blocking probability and an outage probability, Ishikawa, alone or in combination with the other prior art of record, does not disclose or suggest determining a probability from a ratio of a number of the measurements having an RNR below the predetermined RNR to a number of measurements corresponding to those at or below a specific number of active users, as recited in claim 1. Thus, even if Zuniga, Stillwell, and Love are modified with Ishikawa and the other prior art of record, Applicant submits that the prior art of record does not reasonably lead to determining a maximum number of users such that a probability of exceeding a predetermined RNR is below a threshold, wherein the probability is determined from a ratio of a number of the measurements having an RNR below the predetermined RNR to a number of measurements corresponding to those at or below a specific number of active users, as recited in claim 1.

Because Zuniga, Stilwell, Love, and the other prior art of record does not reasonably lead to the invention recited in claim 1, Applicant submits that the claim 1 is allowable. Further, because each of claims 2-4 and 7 depend from claim 1 and necessarily include all of the limitations of claim 1, claims 2-4 and 7 are allowable as well. Further still, since Applicant has cancelled claim 6, Applicant submits that the rejection of claim 6 is moot. Applicant respectfully requests the Examiner to withdraw the rejection of claim 6.

**b. Claims 9-18, 21, and 22**

The Examiner rejected claims 9-18, 21, and 22 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner argued that these claims contain new matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Examiner then argued that the limitation “determining at least one ratio that is at or above a probability threshold,” recited in claim 9, is new matter. Applicant does not concede this limitation is new matter. However, in order to expedite the issuance of a patent on the present application, Applicant has cancelled claims 9-16 and 22. Applicant submits that the rejection of claims 9-16 and 22 is moot, and Applicant respectfully requests the Examiner to withdraw the rejection of claims 9-16 and 22.

Additionally, Applicant has amended claims 17, 18, and 21 to depend from allowable independent claim 1 instead of claim 9. Applicant submits that claims 17, 18, and 21 comply with 35 U.S.C. § 112, first paragraph and are allowable for at least the reason that claims 17, 18, and 21 depend from allowable claim 1.

**4. New Claims**

Applicant added new claims 23-29. Support for new claim 23 is located in the specification, for example, at page 22, lines 20-21. Support for new claim 24 is located in the specification, for example, at page 12, lines 19-21, page 22, lines 20-21, and Figures 5A and 5B. Support for new claim 25 is located in the specification, for example, at page 13, line 19 to page 14, line 8. Support for new claim 26 is located in the specification, for example, at page 16, lines 11-22, page 17, line 21 to page 18, line 3, and Figures 3 and 4. Support for new claims 27-29 is located in the specification, for example, at page 16, lines 5-10 and Figure 8.

Applicant submits that that claims 23-29 are allowable for at least the reason that claims 23-29 depend from allowable claim 1.

**5. Conclusion**

Applicant believes that all of the pending claims have been addressed in this response. However, failure to address a specific rejection or assertion made by the Examiner does not signify that Applicant agrees with or concedes that rejection or assertion.

For the foregoing reasons, Applicant submits that claims 1-4, 7, 17-21, and 23-29 are in condition for allowance. Therefore, Applicant respectfully requests favorable reconsideration and allowance of all of the claims.

Respectfully submitted,

**MCDONNELL BOEHNEN  
HULBERT & BERGHOFF LLP**

Date: July 17, 2008

By: David L. Ciesielski  
David L. Ciesielski  
Reg. No. 57,432